

BEFORE THE NEBRASKA PROFESSIONAL PRACTICES COMMISSION
STATE OF NEBRASKA

Douglas D. Christensen
Commissioner of Education
301 Centennial Mall South, 6th Fl.
P.O. Box 94933
Lincoln, NE 68509-4933

Petitioner,

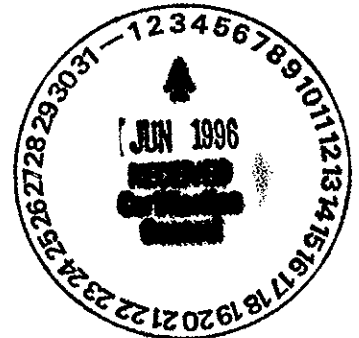
vs.

Rodney E. Boss
P.O. Box 182
Lenora, KS 67645,

Respondent.

N.P.P.C. Case No. 96-5

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER OF THE COMMISSION



I. STATEMENT OF THE CASE

This case commenced with the filing of a Petition on February 12, 1996, by Douglas D. Christensen, Commissioner of Education, Department of Education, State of Nebraska, hereinafter referred to as "Petitioner." The Petition was filed against Rodney E. Boss, hereinafter referred to as "Respondent." The Petition alleges certain acts of conduct by the Respondent in violation of Neb. Rev. Stat. sec. 48-663 (Reissue 1988); Title 92, Nebraska Administrative Code, Chapter 27, Sections 004.02D (effective date December 25, 1989); and Section 004.02H (effective date December 25, 1989), and Section 004.04E (effective date December 25, 1989).

On February 12, 1996, Brian Halstead, the Certification Counsel of the Nebraska Department of Education, gave Respondent notice of his right to submit an answer within twenty-one (21) days after receipt of that notice. On March 4, 1996, Carolyn Grice, Chairperson of the Hearing Panel of the Professional Practices Commission, hereinafter referred to as the "Commission," through Kathi Vontz, Commission Clerk, granted the Respondent an extension of time to file an answer on or before April 1, 1996. On or about April 1, 1996, the Respondent filed an answer, in which he admitted the status of the parties; his holding of a Nebraska public schools teaching certificate, No.

-5090, Type 1, Rank A, Level 7, endorsed in Superintendent K-12, Physical Education K-12, General Office Education 7-12, Principal 7-12, and Basic Business 7-12, with an expiration date of August 31, 1999; and his employment for a period of time as the Superintendent for the Fairmont Public Schools. The Respondent also admitted the completion of certain claims for unemployment insurance benefits of \$4,004 and a subsequent audit revealing that he had been paid one-half of said sum due to a miscalculation. He further alleged that he made restitution in the sum of \$2,002,

entered a no contest plea to pending criminal proceedings, was found guilty, fined \$250 and sentenced to one hundred hours of community service.

On or about, April 2, 1996, Kathi Vontz, as Clerk of the Commission, sent a notice of hearing to all parties advising that public hearing on the Petition and Answer would be held at 9:00 a.m. on the 20th day of April 1996, in the State Board of Education Hearing Room, sixth floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. The hearing notice further stated that the hearing would be held before all members of the Commission, and that Samuel Van Pelt had been appointed legal counsel to advise the Chair in the performance of her duties.

At the above time and place, the Petition and Answer came on for hearing before Commission members Vickie Anderson, Barbara Blackburn, Margaret Crouse, Deanna Gillham, Carolyn Grice, Janice Hinds, Sandy Irish, John Miller, John Nelson, Van Phillips, Joseph Reinert and Mike Wylie, with Carolyn Grice acting as Chairperson. Samuel Van Pelt served as legal counsel, advising the Chair in the performance of her duties. The proceedings were reported by Gloria Sapp of General Reporting Services, Lincoln, Nebraska. The Petitioner appeared by its Certification Counsel, Brian Halstead. The Respondent appeared pro se. The following exhibits were received in evidence: Exhibit 1 - Commission file and pleadings. Exhibit 2 - Title 92, Nebraska Administrative Code, Chapter 27. Exhibit 3 - Title 96, Nebraska Administrative Code, Chapter 1. Exhibit 4 - Title 92, Nebraska Administrative Code, Chapter 28. Exhibit 5 - Title 92, Nebraska Administrative Code, Chapter 29. Exhibit 6 - Transcript of proceedings had in the Fillmore County Court in the case of State v. Boss, CR 95-108. Exhibit 7 - Nebraska Department of Labor publication "Unemployment Insurance," a claimant's information handbook. Exhibit 8 - Nebraska Department of Labor Form UI-401 M, "Claim for Benefits" signed by Rodney E. Boss on 9/1/93. Exhibit 9 - Nebraska Department of Labor Form UI-427, "Work Search Data: signed by Rodney E. Boss on 9/1/93. Exhibit 10 - Copies of 25 Nebraska Department of Labor UI-408 B, plus copies of 24 checks from the Nebraska Department of Labor to Rodney E. Boss totaling \$3,850. Exhibit 11 Copies of two Nebraska Department of Labor Forms UI-41 C, advising Rodney Boss of the Deputy Director's determination. Exhibit 12 - Letter dated 10/1/94 from Rodney Boss to Sandra Taulborg. Exhibit 13 - Nebraska Department of Labor Forms UI-407 showing benefits paid to Rodney Boss from 8/29/93 to 8/27/94 in the total sum of \$4,004. Rodney Boss and Sandra Taulborg testified in person. Counsel for the Petitioner and the Respondent made closing arguments, and the Commission thereupon adjourned and deliberated respecting the same and the evidence. Accordingly, the Commission makes the following findings of fact, conclusions of law, and order.

II. FINDINGS OF FACT

1. The Petitioner is the Commissioner of Education of the State of Nebraska. The Respondent holds a Nebraska public schools teaching certificate, No. -5090, Type 1, Rank A, Level 7, endorsed in Superintendent K-12, Physical Education K-12, General Office Education 7-12, Principal 7-12, and Basic Business 7-12, with an expiration date of August 31, 1999.

2. The Respondent served as Superintendent for the Fairmont Public Schools until

his employment was terminated on August 25, 1993.

3. On or between September 10, 1993, through and including March 13, 1994, the Respondent completed claims for unemployment insurance benefits and received \$2,002 to which he was not entitled. On or about August 25, 1995, the Respondent pled no contest in Fillmore County Court to the amended charge of false statements by an employee, a Class III misdemeanor, in violation of Neb. Rev. Stat. sec. 48-663 (Reissue 1988.)

4. The Respondent was found guilty of the above charge by the Fillmore County Court, was fined \$250, ordered to pay restitution, and ordered to complete one hundred hours of community service. The Respondent has paid the above fine, has made restitution in the sum of \$2,002, and has satisfactorily completed one hundred hours of community service.

III. DISCUSSION

Neb. Rev. Stat., sec. 79-1282(2) (Reissue 1994) states that the Board of Education for just cause may revoke or suspend any teacher's certificate for violation of any of the standards established pursuant to the above section, or for the commission of an immoral act, or for conviction of a felony under the laws of the State.

Section 004.04 E of Chapter 27, Title 92, Nebraska Administrative Code, provides that an educator shall not commit any act of moral turpitude, nor commit any felony under the laws of the United States or any state or territory. A minority of the Commission members felt that the Respondent had committed an act of moral turpitude in applying for unemployment benefits to which he was not entitled in the sum of \$2,002, while a majority of the Commission members believed that the circumstances surrounding this activity did not involve an act of moral turpitude.

Section 004.02H of the above regulations provides that an educator shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation in the performance of professional duties. All Commission members felt that since the Respondent's conduct in applying for the unemployment benefits did not involve the performance of his professional duties, a violation of this regulation had not been proven.

Section 004.02D of the above regulations states that in fulfillment of the educator's contractual and professional responsibilities, the educator shall not make any fraudulent statement or fail to disclose a material fact for which the educator is responsible. A majority of the Commission members felt that the Respondent's conduct in applying for unemployment benefits for which he was not entitled was a general violation of his professional duties and obligation and that, therefore, a violation of this standard had been proven by a preponderance of the evidence. A minority felt that a violation of this standard had not been proven.

In discussion of the appropriate sanction to be imposed upon the Respondent, a majority of the Commission members felt, considering previous decisions by the Commission, that a public reprimand would be the most appropriate sanction, and that a suspension or revocation of the Respondent certificate would be too severe under the

circumstances. A minority of the Commission members felt that a public reprimand was not sufficiently strong and that a one-year suspension or revocation of the Respondent's certificate would be more appropriate.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this case and all proceedings have been in accordance with applicable constitutional, statutory, and regulatory requirements.

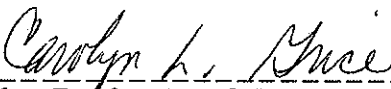
2. The Petitioner has failed to prove by a preponderance of the evidence that the Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in the performance of professional duties. The Petitioner has failed to prove by a preponderance of the evidence that the Respondent committed any act of moral turpitude.

3. The Petitioner has proven by a preponderance of the evidence that the Respondent has violated Neb. Rev. Stat. sec. 79-1282 (2) (Reissue 1993) and has further violated Title 92, Nebraska Administrative Code, Chapter 27, Section 004.02D (effective date December 25, 1989), in that the Respondent made fraudulent statements and failed to disclose a material fact for which he was responsible.

V. RECOMMENDED ORDER

Therefore, the Commission, sitting in its entirety, orders that Rodney E. Boss, holder of Nebraska public schools teaching certificate No. -5090, Type 1, Rank A, Level 7, endorsed in Superintendent K-12, Physical Education K-12, General Office Education 7-12, Principal 7-12, and Basic Business 7-12, with an expiration date of August 31, 1999, be issued a public reprimand for his violation of the above statute and regulations.

Dated this 30th day of May 1996.



Nebraska Professional Practices Commission
By Carolyn Grice
Chairperson of Hearing Committee